

Notice of Allowability

Application No.

10/800,253

Examiner

Jason M. Nolan, Ph.D.

Applicant(s)

BROWN ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/14/2005.
2. ☒ The allowed claim(s) is/are 1-36,38-43 and 47-49.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/12/04 & 6/28/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other PTOL-413B.

DETAILED ACTION

Claims 1-36, 38-43 and 47-49 are currently pending in the instant application.

Claims 37 and 44-46 are cancelled.

Priority

Acknowledgement is made of Applicant's claim for priority via US Provisional Patent Application 60/486,535, filed on July 10, 2003 and foreign priority via EP 03100650.5, filed on March 14, 2003.

Information Disclosure Statement

Applicant's information disclosure statements (IDS), filed on March 12, 2004 and June 28, 2004 have been considered. Please refer to Applicant's copies of the 1449 submitted herewith.

Response to Restriction

Applicant's election without traverse of **Group I, Claims 1-33, 35 and 47-49**, drawn to a compounds and compositions of formulas 1,2 and 4 is acknowledged. Applicant's request to rejoin **Claims 37-43**, drawn to a method for the treatment of respiratory ailments is acknowledged.

Applicant's argument, see Response to Restriction/Election Requirement, filed December 14, 2005, with respect to the Restriction Requirement has been fully considered and found persuasive. The Restriction Requirement of October 11, 2005 has been withdrawn.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Philip Polster on February 13, 2006.

The application has been amended as follows:

1. In **Claim 36**, page 15, line 2, after "in a mammal" and before ", said method . . ." insert - - selected from the group consisting of asthma, chronic bronchoconstriction, acute bronchoconstriction, chronic bronchitis, small airways obstruction, emphysema, obstructive or inflammatory airways diseases, pneumoconiosis, bronchitis, and bronchiectasis - -.
2. Delete **Claims 37 and 44-46**.
3. In **Claim 48**, page 17, line 11, after "NR₉R₁₀;" and before "and R₉ and R₁₀ are" insert - - Ra is a (C₁-C₄)alkyl; - -.

Reasons for Allowance

The present invention relates to a compound of the formula 1 in **Claim 1**. The indole core is substituted at C-5 by a substituted alkyl chain and at C-2 by the cyclic moiety **A**, which is linked through an amide bond and alkyl chain. The combination of these substitutions affords novelty to this invention and no prior art anticipates or renders this invention obvious.

Art Unit: 1626

Due to the overlapping subject matter in the claims of the instant application and those of US Patent 6,372,919, Applicants have agreed to file a terminal disclaimer.

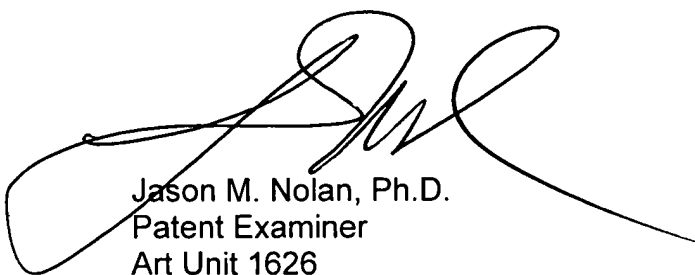
Besides the work of the inventors, no other prior art exists for this family of compounds.

Telephone Inquiry

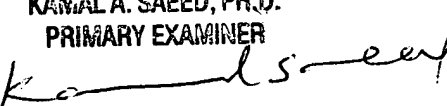
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Jason M. Nolan, Ph.D.** whose telephone number is **(571) 272-4356**. The Examiner can normally be reached on Monday - Friday (9:00 - 5:30PM).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason M. Nolan, Ph.D.
Patent Examiner
Art Unit 1626

KAMALA A. SAEED, PH.D.
PRIMARY EXAMINER

Joseph McKane
Supervisory Patent Examiner
Art Unit 1626
Date: February 15, 2006